

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-216945 **DATE:** June 28, 1985
MATTER OF: Information Marketing International

DIGEST:

1. Protester has not shown that the Air Force improperly placed 10 delivery orders at other than the lowest price under a General Services Administration (GSA) Federal Supply Schedule (FSS) contract where the protester has only produced conflicting evidence on the issue of whether its prices were low. Furthermore, even assuming that the protester had offered lower prices by modifying its FSS price list, the burden is on the supplier to notify the contracting agency of price reductions accepted by GSA and it has not shown that the Air Force had actual notice of any price reductions.
2. When placing orders against mandatory multiple award FSS contracts, agency can award six items, each valued at less than \$500, to same schedule contractor that it awarded 282 items, even though another schedule contractor was low on those six items, where awardee was either low or the only source for all other items. Agency indicated that administrative benefits of splitting requirements would outweigh \$392 price advantage of other FSS contractor for these six items and agency states that it would be difficult to work with two different companies' products.
3. There is no requirement to synopsise in the Commerce Business Daily delivery orders placed against mandatory FSS contracts.

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4. FSS contractor is not an interested party under GAO's Bid Protest Procedures to protest that awardee should have been issued one order instead of 10 orders from its FSS contract so as to obtain applicable quantity discounts where the protester was not the most advantageous FSS contractor in the absence of the discount.

Information Marketing International (IMI) protests the award of 10 delivery orders for various subscriptions for microfilm services to Information Handling Services (IHS) by Robins Air Force Base, Georgia. These orders were from IHS's General Services Administration (GSA) Federal Supply Schedule (FSS) contract No. GS-005-23609. We deny the protest in part and dismiss the remainder.

IMI primarily contends that the Air Force violated the FSS ordering and evaluation procedures prescribed by Federal Acquisition Regulation (FAR), § 8.405-1, 48 C.F.R. § 8.405-1 (1984). That regulation states that orders should be placed with the FSS contractor offering the lowest price available and that any order over \$500 per line item placed at other than the lowest price must be justified. IMI contends that many of the subscriptions offered under its FSS contract were lower priced than IHS's subscriptions. To support this allegation, IMI has submitted a line item cost comparison of prices purportedly based on IHS's and IMI's GSA FSS price schedules. IMI also alleges that the Air Force did not document any cost comparison in the contract file. In this regard, IMI references an Air Force "Memo to File" which states that "[a] sampling of a price comparison of the two schedules [IMI's and IHS's] of the items revealed that IHS prices are lower. . . ." IMI argues that evaluating a "sampling" of products does not comply with the regulation and that its price comparison shows that the memorandum is incorrect. IMI further contends that the "all or none" awards of the items to only one supplier was improper.

The Air Force responds that, notwithstanding the use of the word "sampling" in the memorandum, it made a complete evaluation of product prices using available GSA authorized price list catalogs for both IMI and IHS. The Air Force has submitted a copy of the line item cost comparison of IMI's and IHS's prices on all subscriptions ordered. The Air Force reports that the evaluation established that of the 232 line items covered by the 10 delivery orders, IHS was lower for 81 line items, IHS and IMI offered identical prices for 12 line items, IMI offered a lower price for 6 line items, and IMI offered no equivalent product for 133 line items.

We have examined the record including copies of IHS and IMI FSS contracts in light of IMI's allegations, and we are unable to conclude that the Air Force acted improperly in placing the delivery orders with IHS. Although IMI's line item comparison purports to show IMI's prices lower on a majority of items, the bulk of these prices conflict with IMI's GSA authorized price list, modification No. 14, extended to November 30, 1984, which the Air Force used to evaluate IMI's products.

Even assuming IMI's lower prices may have been accepted by GSA as a modification to its FSS contract, the burden is on the supplier of an item listed under a FSS contract to notify the contracting activity of price reductions accepted by GSA. Absent actual notice of the price reduction, the contracting agency need not consider the price reduction in determining the low price. Dictaphone Corp., B-210692, June 27, 1983, 83-2 C.P.D. ¶ 26; Dictaphone Corp., B-195043, Sept. 25, 1979, 79-2 C.P.D. ¶ 222. Although IMI alleges that it kept the Air Force apprised of the current status of its FSS contract, the Air Force states it only learned subsequent to award that modification No. 24, October 5, 1984, offered 18-month service for certain items. Consequently, we cannot conclude that the Air Force improperly evaluated IMI's prices.

With regard to the six items that the Air Force admits were low under IMI's contract, the Air Force advises that none exceeded \$500 and that there was a total net difference between IHS' and IMI's prices of \$392. The Air Force states that the small cost savings gained by splitting the requirements between IHS and IMI were outweighed by the administrative burden and contends that users would find it cumbersome and confusing working with two companies' products. Under the circumstances, and considering that FAR, § 8.405-1 only requires justifications for awards to higher priced offerors under FSS contracts if the individual line item exceeds \$500, we do not object to the Air Force's placing these relatively small portions of the total order with IHS.

As indicated above, IMI and IHS had the same price under the Air Force's calculations on 12 line items with a total value of \$10,059. FAR, § 8.405-1(b) requires that such ties be broken by giving preference to small business or labor surplus area concerns. The record does not indicate, nor does the protester allege, that there is any difference in IMI's and IHS's small business or labor surplus status. Under the circumstances we have no basis to object to the orders of these items from IHS.

In view of the foregoing, we believe the Air Force had a reasonable basis for ordering all its visual microfilm subscription requirements from IHS.

IMI also alleges that the Air Force wrongfully assumed that a guaranteed pricing plan obligated it to renew its orders with IHS for these subscriptions. IMI contends that this shows that the Air Force did not perform a proper cost comparison. As previously pointed out, the Air Force conducted a line item evaluation of IMI's and IHS's prices and determined that IHS generally offered the lowest prices. There is no indication of any consideration of IHS's guaranteed pricing plan in determining which firm would receive the orders. Consequently, we believe this contention has no merit.

IMI further contends that the Air Force violated FAR, § 5.201, and Pub. L. No. 98-72, 97 Stat. 403 (1983), which generally require that the contracting agency publish notices of proposed contracts in the Commerce Business Daily (CBD). These purchase orders were not synopsisized in the CBD. IMI states that it was prejudiced by the Air Force's failure to synopsisize because it had no knowledge as to when, what, or if the Air Force would procure these services. IMI also advises that although discussions were conducted with IHS prior to the orders, no discussions were conducted with IMI even though the Air Force was aware that it also was interested in the procurement.

Although Pub. L. 98-72 as implemented by FAR subpart 5.2 generally requires that a notice of government requirements be published in the CBD, there are a number of exceptions. For example, the statute excepts procurements from "a mandatory source of supply." Further, Department of Defense (DOD) FAR Supplement § 5.202(v) Defense Acquisition Circular (DAC) No. 84-2, March 5, 1984, 48 C.F.R. § 205.202 (1984) excepts procurements by an order placed under a mandatory FSS contract.

Schedule 76, Part II, products and services, which encompass the requirements acquired under these delivery orders, are mandatory for use by DOD elements. DOD FAR Supp. § 8.404-70 (DAC 84-3, March 5, 1984), 48 C.F.R. § 208.404-70 (1984). Therefore, these orders did not need to be synopsisized in the CBD.

Regarding IMI's allegation about improper discussions with IHS, the Air Force indicates that it only confirmed that the Air Force was entitled to continue using IHS's

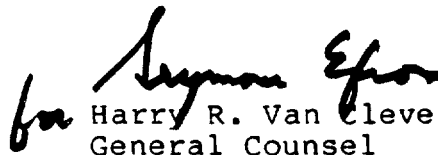
3-year guaranteed pricing plan. We are unaware of any prohibition of discussion between the ordering agency and an FSS contractor in contemplation of placing an order under that contract.

Finally, IMI argues that the Air Force's decision to split the procurement into 10 separate delivery orders violated the GSA FSS program because the Air Force in effect precluded itself from taking advantage of quantity discounts. However, IMI is not an interested party to raise this issue under our Bid Protest Procedures. 4 C.F.R. § 21.1(a) (1984).

The "interested party" requirement serves to ensure that the protesting party has a sufficient stake in the outcome of a protest. ABC Management Services, Inc., 55 Comp. Gen. 397 (1975), 75-2 C.P.D. ¶ 245. Whether a party is sufficiently interested depends on its status in relation to the procurement, the nature of the issue raised, and how these circumstances show the existence of a direct or substantial economic interest on the part of the protester. NEFF Instrument Corp., B-216236, Dec. 11, 1984, 84-2 C.P.D. ¶ 649.

As discussed above, the Air Force reasonably selected IHS for award of the requirements covered by the delivery orders. Any applicable discount that would have resulted from the use of a single order would have made IHS's prices more advantageous to the government. IMI even admits that its rights are not prejudiced by the Air Force's failure to take advantage of applicable discounts under the IHS FSS contract. Under the circumstances, IMI does not have the requisite direct economic interest to be considered an interested party to raise this issue. Eastern Marine Inc., B-212444.2, Aug. 28, 1984, 84-2 C.P.D. ¶ 232; D-K Associates, Inc., B-213417, Apr. 9, 1984, 84-1 C.P.D. ¶ 396. IMI's interest as a concerned taxpayer is not sufficient to make it an "interested party" under our Bid Protest Procedures. Turbine Engine Services, B-210411.2, Apr. 3, 1984, 84-1 C.P.D. ¶ 376. Consequently, IMI's protest of the use of multiple delivery orders, instead of one delivery order, is dismissed.

In view of the foregoing, the protest is denied in part and the remainder dismissed.


for Harry R. Van Cleave
General Counsel